

OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE

DRUG INTERDICTION AND COUNTERDRUG PROGRAMS

SECTION O

COUNTERDRUG

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DRUG INTERDICTION AND COUNTERDRUG PROGRAMS

I. CONSTITUTIONAL FOUNDATION

- A. U.S. Constitution, Article I, Section 8, Clause 1
- The power to tax and spend.
- B. U.S. Constitution, Article I, Section 8, Clause 16
- Organizing and training the militia.
- C. U.S. Constitution, Article I, Section 9, Clause 7
- No money spent except as a consequence of a
lawful appropriation.

II. STATUTORY FOUNDATION

Title 32, United States Code, Section 112 (32 U.S.C.
§ 112).

III. REGULATORY IMPLEMENTATION

National Guard Regulation (AR) 500-2.
(AFR) 55-6; National Guard Counterdrug Support to Law
Enforcement Agencies (DRAFT).

IV. STATUTORY REQUIREMENTS

- A. 32 U.S.C. § 112
 - 1. Plan Requirements
 - a. The Governor must submit a Plan to the
Secretary of Defense.
 - b. The Plan requires two certifications by
the Governor:

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- (1) Operations will be conducted only when personnel involved are not in Federal service.
 - (2) Participation in these activities will be service in addition to annual training under 32 U.S.C. § 502.
- c. The Secretary of Defense must examine adequacy of the Plan before funds are provided.
 - (1) The Secretary must consult with the Director of National Drug Control Policy (DNDCP) when examining adequacy of a Plan.
 - (2) Consultation with DNDCP is not required if the Plan is essentially the same as a prior FY's Plan which was funded.
- 2. Two categories of expense authorized.
 - a. Pay, allowances, clothing, subsistence, gratuities, travel and related expenses.
 - b. Procurement of services and lease of equipment.
- 3. Both categories require a purpose of either:
 - a. Drug interdiction.

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- b. Counterdrug activities - defined as the use of National Guard personnel, while not in Federal service, in any law enforcement activities authorized by State and local law and requested by the Governor. 32 U.S.C. § 112(f)(1).

B. Authorization and Appropriations Acts

- 1. Authorization and appropriation required.
- 2. FY 93 DoD Appropriations Act provides transfer authority for up to \$1.14 billion DoD wide from funds otherwise appropriated for reserve components personnel, O&M, procurement and RDT&E for all types of DoD drug interdiction and counterdrug activities.
- 3. The FY 92 DoD Authorizations Act provided for \$1.2 billion for FY 93 overall DoD drug interdiction and counterdrug activity.

V. PURPOSE OF THE FUNDING

A. Drug Interdiction.

- 1. What is it?
- 2. What it is not.

B. Counterdrug Activities - 32 U.S.C. § 112(F)(1).

- 1. Law enforcement related activities.
- 2. Authorized by State and local law.
- 3. Guard personnel involved--not in Federal service.

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- C. Where is "Demand Reduction"?
1. Only can be an ancillary result of a primary purpose of law enforcement.
 2. No authority for broad outreach to the civilian community.
 3. Specific authority in 1993 DoD Authorization Act for civilian youth opportunities pilot program--not part of the 32 U.S.C. § 112 program per se.
 4. Specific authority for pilot outreach demand reduction program focused on youths and particularly on inner-city youths. This program is counterdrug funded.
- D. General fiscal rule that Federal funds may not benefit specific organizations or individuals - even clothing items for Guard members usually violate this general rule.
1. Entertainment - No.
 2. Caps, T-shirts, mugs, etc. - No such items for members of the public.
 3. Youth camps - Per specific separate authority only.
 4. Educational video tapes - May be ok if an ancillary purpose.
 5. Brochures, pamphlets, etc. - May be ok under ancillary purpose criteria.

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VI. METHODOLOGY TO ANALYZE PROPOSED ACTIVITIES

- A. Is there an approved State Plan?
- B. Does the proposed activity fall within the general parameters of the Plan?
- C. What is the expense category?
 - 1. Pay, allowances, clothing, subsistence, travel, etc.
 - 2. Procurement of services and lease of equipment.
 - 3. Other - will require separate legal authority beyond 32 U.S.C. § 112.
- D. What is the primary and intended purpose of the expense?
 - 1. Drug interdiction?
 - 2. Counterdrug enforcement of law or prevention of violations of law?
 - 3. Other primary purposes - Never under 32 U.S.C. § 112.
 - 4. Ancillary purposes.
 - a. Limited community outreach consequences.
 - b. Setting the example.
 - c. Educational information prepared for proper primary purposes may also be shared with the community.

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E. Pitfalls to Avoid.

1. Procurement of services and lease of equipment must be for the Guard's use and not for the use of other State agencies.
2. No support for a purpose specifically covered by another Federal appropriation.
3. No benefits to individuals or to a particular group or organization. Even items for Guard members cannot be "gifts".
4. No personnel costs for Guard members while in Federal service.

VII. CONCLUSION